

RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #37-09

City of Cape May, Cape May County

WHEREAS, the City of Cape May, Cape May County, petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation on December 23, 2008; and

WHEREAS, Cape May published notice of its petition in the *Press of Atlantic City* on February 20, 2009, which is a newspaper of general circulation within the county, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5; and

WHEREAS, an objection to the plan from the Fair Share Housing Center was received by COAH, on April 6, 2009, during the 45-day objection period; and

WHEREAS, after a review of the City's Housing Element and Fair Share Plan, COAH issued a Pre-Mediation Report Requesting Additional Information (RRAI) on June 2, 2009; and

WHEREAS, mediation between Fair Share Housing Center and Cape May commenced on July 27, 2009 and concluded on August 26, 2009; and

WHEREAS, as a result of mediation, the City agreed to submit additional information required for its Rehabilitation Program, add two mechanisms to address its unmet need and address its very low-income obligation with two accessory apartments; and

WHEREAS, the City memorialized its commitments that resulted from mediation in its September 2, 2009 response to the RRAI; and

WHEREAS, in a letter dated September 5, 2009, Fair Share Housing Center withdrew its objection; and

WHEREAS, a Mediation Report was issued on September 25, 2009 as part of the City's Compliance Report; and

WHEREAS, as part of its second round certification, Cape May was granted a vacant land adjustment of 58 units that resulted in a reduced new construction obligation or realistic development potential (RDP) of zero and an unmet need of 58 units; and

WHEREAS, Cape May's Fair Share Plan addresses its total 1987-2018 affordable housing obligation, which consists of an eight-unit rehabilitation share, a 58-unit unmet need from the prior round obligation and a six-unit projected growth share obligation pursuant to N.J.A.C. 5:97; and

WHEREAS, COAH staff has reviewed the City's Housing Element and Fair Share Plan, which is incorporated by reference herein; and

WHEREAS, Cape May proposes to address its eight-unit rehabilitation share with a municipally sponsored rehabilitation program; and

WHEREAS, the City proposes to address its unmet need from its prior round obligation with a 14-unit inclusionary development on the Sewell Tract, which resulted from a Settlement Agreement with the New Jersey Department of Environmental Protection and East Cape May Associates and an inclusionary zone that will overlay six areas of potential development that will permit a higher density bonus and set-aside; and

WHEREAS, Cape May proposes to address its six-unit projected growth share obligation with a 10-unit Market to Affordable Program, a 10-unit Accessory Apartment Program and seven units from a city-wide inclusionary zone; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on September 25, 2009 COAH issued a Compliance Report and Mediation Report (attached as Exhibit A and incorporated by reference

herein) recommending approval of Cape May's petition for third round substantive certification; and

WHEREAS, the 14-day period to submit comments to the COAH Compliance Report and Mediation report pursuant to N.J.A.C. 5:96-6.2(b) ended on October 9, 2009 and COAH did not receive comments.

NOW THEREFORE BE IT RESOLVED that the Housing Element and Fair Share Plan submitted by Cape May City comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.2(a), after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to Cape May; and

BE IT FURTHER RESOLVED that after receiving final substantive certification, pursuant to N.J.A.C. 5:96-6.3(e), Cape May shall adopt all implementing Fair Share Ordinances within 45 days of this grant of substantive certification; and

BE IT FURTHER RESOLVED if the City fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that Cape May shall submit all Fair Share Ordinances to COAH upon adoption; and

BE IT FURTHER RESOLVED that Cape May shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the City's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of Cape May's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in Cape May and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the City is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation is less than the projected growth share obligation, Cape May shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), Cape May's substantive certification shall remain in effect until December 31, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of Cape May to provide for the realistic opportunity of its fair share of low and moderate income housing and which the City fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on October 14, 2009

A handwritten signature in cursive script that reads "Renee Reiss". The signature is fluid and elegant, with the first name "Renee" and last name "Reiss" clearly distinguishable.

Renee Reiss, Secretary
Council on Affordable Housing



***Council on Affordable Housing
Compliance Report
September 25, 2009***



Municipality: *Cape May City*
County: *Cape May County*

COAH Region: 6
SDRP Planning Area: 5
Special Resource Area: *CAFRA*

Housing Element and Fair Share Plan Adopted: *December 9, 2008*
Petition for 3rd Round Substantive Certification: *December 29, 2008*
Completeness Determination: *February 17, 2009*
Date of Publication: *February 20, 2009*

Objections Received: *Yes, 1) Fair Share Housing Center*
Mediation Settlement: *September 5, 2009*

Petition Includes:

VLA: *Yes*
GPA: *No*
Waiver: *No*

Date of Site Visit: *May 8, 2009*

History of Approvals:

	COAH	JOC	N/A
First Round:			<i>x</i>
Second Round:	<i>7/9/1997</i>		
Extended Certification:	<i>4/13/2005</i>		

Plan Preparer: *Craig Hurless, P.P., Polistina & Associates, LLC*

Municipal Housing Liaison: *Diane Weldon, City Clerk*

Recommendation: Grant Substantive Certification

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	8
Prior Round Realistic Development Potential (RDP) (Unmet Need of 58)	0
Proposed Growth Share Obligation	6

ACTUAL GROWTH and GROWTH SHARE through September 30, 2008¹

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
71	14.2 units	119	7.4 units	22 units

COMPLIANCE PLAN SUMMARY

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
Rehabilitation: 8 units				
Program(s)	Municipal Program		8	8
Rehabilitation Subtotal				8
NEW CONSTRUCTION:				
Prior Round: 0-unit RDP²				
Credits	N/A	-		-
Proposed Mechanisms	N/A		-	-
Prior Round Subtotal				0
Growth Share: 6 units				
Proposed Mechanisms	Inclusionary Zoning		7	7
	Market to Affordable Program		10	10
	Accessory Apartments		10	10
Growth Share Subtotal				27

¹ This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

² Realistic development potential (RDP) of 0 units plus unmet need of 58 units equals prior round obligation of 58 units.

I. HOUSING ELEMENT

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. Cape May City's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

A. Rehabilitation Share

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, Cape May City has a rehabilitation share of eight units.

B. Prior Round Obligation

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. Cape May City has a prior round obligation of 58 units. However, Cape May City received a vacant land adjustment with its first round substantive certification, establishing a realistic development potential (RDP) of 0 and an unmet need of 58 units.

C. Projected Growth Share

The projected growth share is initially calculated based on household (residential) and employment (non-residential) growth projections for 2004 through 2018. Pursuant to Appendix

F of N.J.A.C. 5:97, Cape May has a residential growth projection of 16 units and a non-residential growth projection of 51 jobs. Therefore, Cape May's total projected growth share for the period 1999-2018 is 6 affordable units consisting of a 3-unit projected residential growth share and a 3-unit projected non-residential growth share.³

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	8
Prior Round Realistic Development Potential (RDP) (Unmet Need of 58)	0
Projected Growth Share Obligation	6

II. FAIR SHARE PLAN

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

Cape May's Fair Share Plan, and the supporting documentation incorporated by reference therein, address the requirements of N.J.A.C. 5:97-3.1 as follows:

A. Plan to Address Rehabilitation Share

Rehabilitation Share Credits

Cape May City is not requesting any credits for units rehabilitated subsequent to April 1, 2000.

Proposed Rehabilitation Program

³ Pursuant to N.J.A.C. 5:97-2.2(d), Cape May's residential projection of 16 units is divided by 5 to yield 3 affordable units and the nonresidential projection of 51 jobs is divided by 16 to yield 3 units.

Municipal Rehabilitation Program

Cape May is proposing a municipal-wide rehabilitation program to address its eight-unit rehabilitation share. Cape May's draft spending plan allocates \$80,000 in development fees toward a rehabilitation program, which equates to an average of \$10,000 per unit in hard costs. Cape May's rehabilitation program complies with the requirements of N.J.A.C. 5:97-6.2, which includes providing more than half the funds for rehabilitation by the mid-point of substantive certification. As part of its September 2, 2009 response to COAH's Report Requesting Additional Information (RRAI), the City provided a draft Operating Manual and Affirmative Marketing Plan. The City anticipates that the existing 84 low-income rental units operated under the Cape May Housing Authority (CMHA) will need roof repairs, which are eligible under this program. In addition, the program is available to qualified owner-occupied or renter-occupied units. Cape May is in the process of selecting an experienced Administrative Agent to administer this program and will enter into contract within 45 days of certification. **[8 rehabilitated units]**

Proposed Rehabilitation Program	
Rehabilitation Program	# Units
Municipal Rehabilitation Program	8
TOTAL	8

B. Plan to Address Prior Round Obligation

Prior Round Realistic Development Potential (RDP) Credits

Cape May City has a 0-unit prior round RDP and as such, does not have any credits toward its RDP.

Prior Round Unmet Need Credits

As described within Cape May's September 2, 2009 response to COAH's Request for Additional Information, the City plans to address the 58-unit unmet need through the following mechanisms, which were not part of the City's initial petition:

Inclusionary Overlay Zone

Cape May will address a portion of its prior round unmet need through an inclusionary zone that will overlay six areas of potential development. This overlay zone supplements the city-wide inclusionary zone the City has already proposed to address its growth share obligation (see below). To meet the unmet need from the prior round, the City proposes a higher density incentive in which developers of residential housing may construct affordable housing at a higher set-aside than proposed in the city-wide overlay zone. In these six designated areas (see chart below), the developer will have the option of building affordable units at a 25% set-aside for a density bonus of 50% for any residential development regardless of the minimum number of units. The program is available to projects with a minimum area of 2 acres of land.

The six areas total approximately 53 acres and may yield between 24 and 129 affordable units, based on economic and environmental constraints. Three areas are in the downtown service/light industrial zone, one is located in East Cape May, one is along Lafayette Street and one is an existing multifamily development along Heritage Lane. The lots are a mix of privately and publicly owned land and are a mix of vacant, underutilized and developed properties. The City describes the first and second sites listed below as more likely to be developed than the next four sites. Zoning will be adopted within 45 days of substantive certification. **[24 zoned units]**

Site Number	Total Acres	Developable Acres	Min # of Aff. Units*	Max # of Aff. Units*	Zoning District(s)	Density units/acre
1	2.3	1.67	4.35	10.88	C5	6.96 – 17.4
2	8.5	2.5	6.52	16.31	C5 and R3	6.96 – 17.4
3	5.5	5.0	13.1	32.6	C5	6.96 – 17.4
4	4.0	4.0	0	7.1	R1-PW	4.65
5	26	7.7	0	16.7	R2-PW	5.81
6	7.0	7.0	0	45.67	C3	17.4

* Range in yield of affordable units is based on difference between single-family and multi-family unit densities.

East Cape May – Sewell Tract

Cape May has submitted a signed settlement agreement between the City, the New Jersey Department of Environmental Protection (NJDEP) and East Cape May Associates dated July 1, 2009 (Attachment 1) that will result in the construction of 14 affordable housing units. The 96-

acre property, known as the Sewell Point Tract, is the last large piece of vacant land in the City and is located in the eastern portion of Cape May, adjacent to the United States Coast Guard Facility. During the 1980's East Cape May Associates received approvals to construct 366 market-rate units on this tract; however, the NJDEP did not grant approvals under the Coastal Area Facilities Review Act (CAFRA). Litigation ensued and in 2003 mediation commenced between the parties. As a result, a Settlement Agreement was reached in 2009, which permits East Cape May Associates to build 71 single-family market-rate units in the least environmentally constrained portion of the Tract. The remaining land (approximately 78 acres) will be preserved as open space and the developer agrees to construct seven duplexes that will accommodate 14 affordable family units. Cape May City will adopt a zoning ordinance on or before September 30, 2009 changing the zoning to permit single-family residential lots and required 14 affordable units on-site and will cooperate with East Cape May Associates in its efforts to obtain all necessary approvals. The construction of affordable units will be consistent with the City's city-wide inclusionary zoning ordinance described below. **[14 zoned units]**

Prior Round Obligation Parameters

Cape May had a prior round RDP of 0 and therefore the prior round parameters do not apply. Also, the City has not proposed to meet its unmet need with any age-restricted housing.

C. Plan to Address Projected Growth Share

Proposed Affordable Housing Mechanisms

Cape May has a projected growth share obligation of six units. Cape May proposes the following mechanisms to address its projected growth share obligation:

Inclusionary Zoning

The City proposes a city-wide inclusionary zoning ordinance to address seven units of its growth share obligation. The ordinance would apply for any residential development consisting of five or more new market rate dwelling units that received preliminary or final approval after the effective date of this ordinance. The City provides a chart of anticipated development that may result in the production of affordable units. The City anticipates the following: one affordable unit in its R1, R1A single family zone with a density of 4.65 units per acre; one

affordable unit in its R2 single family zone with a density of 5.81 units per acre; one affordable unit in its R3 zone with an average base density of 11.18 units per acre; and four units in its C2 Apartment over Commercial zone with an average base density of 29.04 units per acre. These units are in addition to any units that result from the unmet need overlay zone.

The proposed zoning meets the presumptive minimum density of four units per acre for a Planning Area 5 with sewer service in accordance with N.J.A.C. 5:97- 6.4(b)2iii. In addition, the proposed zoning ordinance provides residential development in any of the residential zoning districts in Cape May City, which results in the construction of five or more new market-rate dwelling units be permitted a presumptive density increase of 40% over the permitted density in the existing zoning with a presumptive maximum affordable housing set-aside of 20% of the total number of units in the development. In addition, the ordinance provides a payment in lieu of \$45,715 for each market-rate unit to be developed. The zoning ordinance must be adopted within 45 days of substantive certification. The City is served by public water and sewer. [7 zoned units]

Market to Affordable Program

Cape May City proposes a 10-unit Market to Affordable Program to address a portion of its growth share obligation. The City states that it will provide a minimum of \$25,000 per unit to subsidize each moderate income unit and a \$30,000 per unit to subsidize each low income unit with additional subsidy depending on market prices and rent within the municipality. The City intends to fund the program through its development fee ordinance and has also provided a draft resolution of intent to bond in the event of a funding shortfall, which must be approved within 45 days of substantive certification. The City's spending plan provides for \$481,017 for the Market to Affordable Program. Market to affordable units are permitted in all zones of the City and will include rental units. COAH staff notes from its site visit on May 8, 2009 that many retail establishments in the commercial district are multi-story and the upper stories could be viable candidates and could be considered for the Market to Affordable Program. The City provided a multiple listing service (MLS) showing 13 multi-family properties for-sale valued at under \$1 million and four condominiums on the market for under \$300,000.

Deed restrictions for market to affordable units will be for a period of no less than 30 years. The City has provided a draft Operating Manual and a draft Affirmative Marketing Plan

consistent with UHAC which will be finalized within 45 days of substantive certification. Cape May is in the process of selecting a qualified Administrative Agent to administer the program and will enter into contract within 45 days of certification. **[10 market to affordable units]**

Accessory Apartment Program

The City of Cape May proposes a 10-unit accessory apartment program to address its remaining projected growth share obligation. The City will provide a minimum of \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment and \$25,000 per unit to subsidize each low-income accessory apartment. The City intends to fund the program through development fees and has allocated \$420,000 in its spending plan toward accessory apartments. The City has also provided a draft resolution of intent to bond in the event of a funding shortfall, which must be approved within 45 days of substantive certification. During a site visit on May 8, 2009, COAH staff observed properties with detached garages that may be converted to accessory apartments. The City has provided a draft Operating Manual Affirmative Marketing Plan consistent with COAH and UHAC requirements. Cape May is in the process of selecting a qualified Administered Agent to administer the program. Finalized documentation will be submitted to COAH within 45 days of certification. **[10 accessory apartments]**

Growth Share Parameters

Cape May City proposes to address the applicable Growth Share parameters as follows:

Growth Share Rental Obligation:⁴ 2 Units

Development/Project Name	Type of Affordable Unit	# Units
Accessory Apartment Program	Accessory	10
TOTAL		10

⁴ Projected Growth Share Rental Obligation: .25(Projected Growth Share) or .25(6)= 1.5 units N.J.A.C. 5:97-3.10(b)3

Growth Share Family Rental Requirement⁵ : 1 Unit

Development/Project Name	Type of Affordable Unit	# Units
Accessory Apartment Program	Accessory	10
TOTAL		10

Growth Share Minimum Family Requirement⁶ : 3 Units

Development/Project Name	Type of Affordable Unit	# Units
Market to Affordable Program	Market to Affordable	10
Accessory Apartment Program	Accessory	10
Inclusionary Zoning	For-Sale	7
TOTAL		27

Very Low Income Minimum Requirement⁷ : 1 Unit

Development/Project Name	Type of Affordable Unit	# Units
Accessory Apartments	Accessory	2
TOTAL		2

Age-Restricted Maximum⁸ : 1 Unit

Development/Project Name	Type of Affordable Unit	# Units
N/A		-
TOTAL		0

Bonus Maximum⁹: 1 Bonus

Development/Project Name	Type of Bonus	# Bonuses
N/A		-
TOTAL		0

⁵ Projected Growth Share Family Rental Requirement: .5(Projected Growth Share Rental Requirement) or .5(1.5)= .75 units N.J.A.C. 5:97-3.4(b)

⁶ Projected Growth Share Family Requirement: .5(Units Addressing the Growth Share Obligation) or .5(6)= 3 units N.J.A.C. 5:97-3.9

⁷ Growth Share Very Low Income Requirement: .13(Projected Growth Share Obligation) or .13(6)= .78 units pursuant to P.L.2008, c.46

⁸ Projected Growth Share Age Restricted Maximum: .25(Projected Growth Share) or .25(6)= 1.5 units N.J.A.C. 5:97-3.10(c)2

⁹ Projected Bonus Maximum: .25(Projected Growth Share) or .25(6)= 1.5 units N.J.A.C. 5:97-3.20

Actual Growth Share Obligation

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, Cape May City has issued certificates of occupancy for 71 housing units and also for the nonresidential square footage equivalent of 119 jobs, yielding an actual growth share obligation through September 30, 2008, of 22 affordable units.

D. Summary of Plan to Address Fair Share Obligation

REHABILITATION SHARE SUMMARY

Rehabilitation Share: 8 Units

Program Name	# Units
Municipal Rehabilitation Program	8
TOTAL	8

PRIOR ROUND SUMMARY

Prior Round Obligation: 0-Unit RDP

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Post-1986 Credits	N/A	-	-	-	-
Proposed Mechanisms	N/A	-	-	-	-
TOTAL					0

GROWTH SHARE SUMMARY
Projected Growth Share Obligation: 6 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Proposed Mechanisms	Inclusionary Zoning	7	-	-	7
	Market to Affordable	10	-	-	10
	Accessory Apartments	10	-	-	10
Subtotal		27		-	27
TOTAL					27

III. SUMMARY OF MEDIATION

A. Objection

COAH received one objection to Cape May City's Third Round Housing Element and Fair Share Plan, from Kevin D. Walsh, Esq. representing the Fair Share Housing Center (FSHC). The objection was summarized in COAH's June 2, 2009 Pre-Mediation Report Requesting Additional Information.

B. Mediation

Mediation commenced on July 27, 2009 and concluded on August 26, 2009. This mediation ended with Fair Share Housing Center withdrawing its objection based on the City's plan to 1) submit additional information for its Rehabilitation Program, 2) add two additional mechanisms to address its unmet need and 3) address its very low-income obligation. Cape May memorialized its commitment in its September 2, 2009 response to COAH's Report Requesting Additional Information. The results of the mediation are included in a Mediation Report dated September 23, 2009. A copy of the Mediation Report is attached as Attachment 2.

IV. FAIR SHARE DOCUMENT REVIEW

A. Development Fee Ordinance

Cape May submitted a proposed development fee ordinance for COAH's review and approval with its third round petition. The development fee ordinance was approved on March 17, 2009.

B. Third Round Spending Plan

A third round spending plan was submitted by Cape May City with the City's third round petition for COAH's review and approval. The spending plan will be reviewed by COAH in a separate report.

C. Affordable Housing Ordinance/Affordable Housing Administration

Cape May submitted a draft affordable housing ordinance with its third round petition that comports with the requirements of the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., which was amended on December 20, 2004. The draft proposed ordinance also includes the compliance with barrier free sub code of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

Cape May City has provided an ordinance establishing the position of a municipal housing liaison and a resolution appointing Diane Weldon as municipal housing liaison.

Cape May is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within Cape May and must identify an experienced administrative entity for that purpose within 45 days of substantive certification. Pursuant to N.J.A.C. 5:80-26.14(b), Cape May has submitted a draft written operating manual for administering affordable units within the City, for both its Accessory Apartment and Market to Affordable Programs, which must be finalized within 45 days of substantive certification.

D. Affirmative Marketing Plan

Cape May submitted an affirmative marketing plan that comports with the requirements of the UHAC and ensures the units in Cape May's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by Cape May within 45 days of COAH's grant of substantive certification and submitted to COAH.

V. MONITORING

Cape May must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the municipality's actual growth pursuant to N.J.A.C. 5:97-2.5. As indicated above, credits for built units will be validated and verified by COAH staff during monitoring prior to the first biennial plan evaluation. It should be noted that credits for affordable housing programs and/or affordable units must be in compliance with N.J.A.C. 5:97-4. If the units are determined not to be eligible for credit, COAH will notify Cape May in writing and the City may be directed to amend its certified plan to address the shortfall.

Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of Cape May's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in Cape May and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan to address the shortfall.

VI. RECOMMENDATION

Mediation has been concluded with an endorsed settlement between the two parties. COAH staff recommends that the mediation report, Attachment 2, be accepted and that Cape May is granted third round substantive certification. Cape May must adopt all necessary implementing ordinances (including a contract with an administrative agent, a finalized operating manual and affirmative market plan, a zoning ordinance for its inclusionary zone and an affordable housing ordinance) within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption.

ATTACHMENT 1

CITY OF CAPE MAY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION NO. 155-07-2009

**RESOLUTION TO APPROVE SETTLEMENT AGREEMENT IN MATTER
OF EAST CAPE MAY ASSOCIATES, INC. V. NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION REGARDING PROPERTY
KNOWN AS SEWELL POINT TRACT**

MOTION: Kurkowski

SECOND: Swain

WHEREAS, East Cape May Associates, Inc. ("East Cape May") is the owner of a certain tract of land consisting of approximately 96 acres east of Pittsburgh Avenue, more commonly known as the "Sewell Point Tract";

WHEREAS, during the 1980's, East Cape May received approvals to build 366 single family residential units within the Sewell Point Tract and the City of Cape May was obligated, based upon an agreement that was executed several years prior thereto and upheld in court as being valid and enforceable, to make various infrastructure improvements including, without limitation, installing streets as well as running water and sewer lines and other related infrastructure improvements within the proposed development;

WHEREAS, East Cape May was unable to obtain a permit for the development from the Land Use Regulation Program of the New Jersey Department of Environmental Protection ("NJDEP") under the Coastal Area Facilities Review Act ("CAFRA") and, as a result, litigation ensued between East Cape May and NJDEP;

WHEREAS, the American Littoral Society ("ALS") participated in the litigation in an effort to support the NJDEP in its decision not to allow the development as planned;

WHEREAS, after many years of litigation and through a long, protracted mediation process that commenced in 2003, the City along with the litigants have been attempting to limit development to the least environmentally sensitive areas and to preserve a majority of the Sewell Point Tract as open space in perpetuity;

WHEREAS, the City has been requested to utilize its share of New Jersey Green Acres Funds to be matched by a grant from the Cape May County Open Space Fund, to contribute toward a global settlement in exchange for being relieved of all obligations for infrastructure improvements, as referenced above, as well as receiving joint ownership rights with NJDEP to the preserved land (consisting of approximately 78 acres) and with the authorization to select a conservation group to manage such preserve for passive recreation activities;

WHEREAS, the City has also been requested to contribute land owned by the City adjacent to the Sewell Point Tract so that the more sensitive areas would be left undisturbed, which will result in the development of 71 single family homes within the Sewell Point Tract;

WHEREAS, East Cape May has also agreed to utilize some of its land adjacent to the Sewell Point Tract along with a portion of the City's land to develop 14 affordable housing units to augment the 71 market rate units, subject to various conditions which are more fully set forth in the proposed Settlement Agreement which include, without limitation, mitigation requirements and a permit from the Army Corps of Engineers;

WHEREAS, the Cape May Mayor and City Council have been consulted and have participated throughout the mediation process and have expressed concerns which have been duly considered and included in the proposed Settlement Agreement for the preservation of a majority of the Sewell Point Tract as well as to address the City's infrastructure cost obligations and potential affordable housing obligations under COAH; and

WHEREAS, the City has also been able to reserve, as part of City land, two single family market rate lots that can be used for future land development opportunities to benefit the City in exchange for creating open space and recreational areas in other parts of the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Cape May, County of Cape May, State of New Jersey, as follows:

1. That the Settlement Agreement, in the form and content attached hereto as EXHIBIT A and by this reference made a part hereof, is hereby approved, subject to meeting all of the conditions contained therein.
2. That the Mayor and Clerk are hereby authorized and directed to execute the Settlement Agreement on behalf of the City of Cape May, and the City Manager and all other appropriate City officials are authorized and directed to take all actions as may be necessary to effectuate all of the terms and conditions set forth therein.
3. That the Settlement Agreement shall be forwarded to the Cape May City Planning Board for consideration of zoning changes that would enable the development to occur as contemplated in the Settlement Agreement and provide to the Cape May City Council a resolution to indicate whether such proposed changes are consistent with the City's Master Plan.

I hereby certify the foregoing to be an original resolution adopted by the City Council of the City of Cape May at a meeting held on July 1, 2009.



Diane L. Weldon, City Clerk

Exhibit A
SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made and executed this 1st day of July, 2009 by and Between the City of Cape May ("Cape May"), East Cape May Associates, a Florida limited Partnership ("ECM"), and the New Jersey Department of Environmental Protection, an agency of the State of New Jersey ("NJDEP").

Background

ECM is the owner of certain real estate situated the City of Cape May, consisting of approximately 100 acres (the "Property"). The Property is the subject of certain litigation between ECM and NJDEP, which is pending in the Superior Court of New Jersey, Cape May County, Law Division (the "Court"), as Docket No. CPM-L-1217-92 (the "Action").

ECM and NJDEP, together with the American Littoral Society ("ALS") and Cape May wishing to avoid the need for litigation and desiring to facilitate settlement of the Action, entered into a Mediation Agreement in Principle dated October 3, 2008 (the "Original Mediation Agreement"), as amended by Amendment to Mediation Agreement in Principle dated December 31, 2008 (the "Amendment to Mediation Agreement", and together with the Original Mediation Agreement, sometimes collectively referred to herein as the "Mediation Agreement").

In order to supplement the Mediation Agreement and in order to clarify certain issues arising thereunder, which involve the City of Cape May, the parties are desirous of setting forth their respective agreements pursuant to the terms and conditions of this Settlement Agreement (the "Settlement"). All of the terms and conditions of the settlement agreed to between the parties are set forth below and in the Mediation Agreement.

NOW, THEREFORE, in order to effectuate the foregoing, and intending to be legally bound hereby, the parties hereto agree as follows:

1. At Closing (as defined in the Mediation Agreement, and subject to satisfaction of the conditions precedent) Cape May shall convey Block 1163, Lot 7 to ECM; and ECM may thereafter develop on Block 1163, Lots 7 and 8, twelve (12) lots, each to be approximately 75' wide x 125' long, as set forth on Exhibit "A".

2. At Closing (subject to satisfaction of the conditions precedent) Cape May shall convey Block 1167, Lot 2 to ECM; and ECM shall thereafter develop on Block 1167, Lots 2, 1.01 and 1.02 in the R-3 zone up to seven (7) lots for seven (7) side-by-side duplex buildings (14 duplex units), which shall be restricted for sale only (and not for rent) as low and moderate income dwelling units (the "Affordable Housing") based upon the conceptual plan, as set forth on Exhibit "B", which also includes two (2) market rate lots for single family detached dwelling units that the City shall have the right to retain, develop and/or convey in its governmental discretion (the "City's Market Rate Lots"). Cape May's conveyance of Lot 7, Block 1163 and of Lot 2, Block 1167 along with its own development of the two dwelling units on Lot 2, Block 1167 are all intended to address the constitutional obligation to provide affordable housing at the least possible cost. The NJDEP shall issue all necessary permits for the City's Market Rate Lots including a CAFRA Permit and Wetlands Permit consistent with NJDEP rules. On or before Closing, Cape May shall place Block 1168, Lot 2 on the Green Acres Open Space Inventory

Closing, Cape May shall place Block 1168, Lot 2 on the Green Acres Open Space Inventory (ROSI). Cape May shall vacate Ohio and Virginia Avenues from Pittsburgh Avenue to Block 1167, Lot 3, ECM can and will create a new street with all Affordable Housing units fronting on the new street. The Affordable Housing will be built on the lots referenced in this section. The property to be conveyed at Closing from Cape May to ECM described in sections 1 and 2 of this Agreement shall hereinafter be collectively referred to as the "Cape May Property". After Closing (and subject to satisfaction of the conditions precedent), the obligations of ECM to develop the affordable housing units under this section shall be deemed a contractual obligation and shall therefor continue notwithstanding any revisions and/or judicial decisions which invalidate or otherwise alter the third round requirements which have been advanced by the New Jersey Council on Affordable Housing under the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

3. At Closing (and subject to satisfaction of the conditions precedent) ECM shall deliver to Cape May a release ("Release"), which Release shall release any and all claims that ECM has against Cape May as well as any obligations that Cape May has to provide water, sewer and storm water mains, road base, curbs, sidewalks, finish roads and any other on-site or off-tract infrastructure improvements that may be required by Cape May pursuant to any and all agreements previously executed by Cape May with ECM or its predecessors in title to the Property and all judgments entered in connection with the litigation of any such agreements including, without limitation, that certain Agreement between Cape May and Cape May Greene, Inc. dated August 15, 1969 and assigned to ECM. However, Cape May shall be obligated to provide ECM with adequate water and sewer capacity for the Project.

4. At Closing, Cape May will contribute the sum of \$4,400,000.00 toward NJDEP's payment requirement set forth in Paragraph 4 of the Original Mediation Agreement, which amount Cape May intends to obtain through a \$2,200,000.00 grant from the Green Acres Program within NJDEP (the "Green Acres Grant") and a \$2,000,000 grant from the County of Cape May Open Space Fund and Cape May will provide an additional \$200,000.00 from its general funds (the "Cape May Funds").

5. This Agreement is contingent upon the following conditions precedent being met, which can be waived by ECM:

- a. Subject to the Mediation Agreement and the background discussion, ECM being able to obtain any and all approvals necessary to develop a seventy-one (71) market rate single-family residential lots having dimensions of approximately 75' by 125' and seven (7) affordable duplex lots each of which shall be developed with semidetached dwelling units for a total of fourteen dwelling units (the "Project"), from Cape May, Cape May County, NJDEP and the US Army Corp. of Engineers;
- b. Conveyance of the Cape May Property to ECM;
- c. ECM's entry into a comprehensive settlement agreement with the NJDEP; and
- d. Cape May's adoption of a zoning ordinance on or before September 30, 2009, changing the zoning of Block 1199, Block 1200, Block 1210, Lot 1, Block 1211 and Cape May Avenue between Wilmington and Buffalo Avenues, from RC (PW) to R-1 (PW) and permitting single family residential lots with approximate

dimensions of 75'X 125' and lot areas of 9,375 square feet. Because of the irregular shape of the Property to be developed, certain lots will be less than 75' wide and some lots will have less than 9,375 square feet. A proposed plan is attached hereto as Exhibit "A". The zone regulations should allow reduced frontage, lot area and other bulk requirements as a result of clustering.

- e. Cape May's passage and adoption of necessary vacation ordinances to vacate portions of Cape May Avenue, Chicago Avenue, Idaho Avenue, Wilmington Avenue, Maryland Avenue, Virginia Avenue, Ohio Avenue and any other streets necessary for the development of the Project.
- f. This Agreement is contingent upon the receipt by Cape May of the Green Acres Grant in accordance with Paragraph 4, hereinabove, and upon NJDEP's approval of the dwelling units described in paragraph 2 without any mitigation plan or costs that are unacceptable to ECM or to Cape May in each one's sole discretion.

6. ECM has the right to apply for all necessary Project approvals for the Cape May Property and Cape May will cooperate with ECM in its efforts to obtain such approvals.

7. At Closing, and after satisfaction of the conditions precedent, ECM will deliver the Release to Cape May. Cape May will convey to ECM the property identified in paragraph 2 of this Agreement. Cape May will pay the agreed-upon \$4,400,000.00 to ECM as provided in the Mediation Agreement.

8. The Cape May Property shall be conveyed by Bargain and Sale Deed with marketable title and free and clear of all mortgages, liens, judgments and restrictions.

9. Subject to the NJDEP's right under the Mediation Agreement to accept conservation restrictions in lieu of a fee conveyance, ECM shall convey the remainder of the Property in fee simple and NJDEP and the City of Cape May shall jointly acquire the remainder of the Property estimated to be approximately 78 acres, none of which may be developed or disturbed except as set forth via the procedures in this paragraph 9. The Property shall be managed by a conservation group, such as the Nature Conservancy, selected by Cape May in consultation with ALS and subject to the consent of the NJDEP which shall not be unreasonably withheld. In the event that Cape May and/or NJDEP determine to install passive recreation within the undeveloped portion of the Property that is to be preserved, Cape May and the NJDEP Division of Parks and Forestry shall apply to the NJDEP Division of Land Use Regulation and to the US Army Corps of Engineers, as applicable, for the requisite permit(s), based upon plans that are mutually developed by Cape May and NJDEP Parks and Forestry, in consultation with ECM and ALS. Said plans shall not interfere with the use and occupancy of the residents and owners of the Project. Subject to the requisite approvals, the passive recreation may include, without limitation, observation areas, walkways, trails and informational signs. Should NJDEP decide not to acquire the remainder of the Property in a fee conveyance, Cape May shall have the option to do so subject to all of the conservations restrictions and the other terms and conditions of the Mediation Agreement and this Agreement.

10. Cape May agrees to facilitate and encourage the approval of ECM's project.

11. In the event ECM is unable to obtain the contemplated agreement with the

NJDEP or any necessary Project permit or approval is denied, or if any other condition precedent is not met, ECM may terminate this Agreement and all conditions shall be null and void and no previously existing right will be released or extinguished.

12. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and, unless otherwise provided for herein, shall be deemed to have been duly given and received only upon delivery, or refusal of delivery by the intended recipient, when sent either (a) by courier service such as Federal Express or by other messenger, or (b) by the United States mails, registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

If to City of Cape May:

Dr. Edward J. Mahaney, Jr.
Mayor, City of Cape May
643 Washington Street
Cape May, NJ 08204-2397
Fax: 609-884-8589

With a copy to:

Anthony P. Monzo, Esq.
MONZO CATANESE
Schoolhouse Office Park
211 South Main St., Suite 104
Cape May Court House, NJ 08210
Fax: 609-463-4606

If to ECM:

Phillip B. Robinson
Centre de ski Mont Blanc
1006, Route 117
Saint-Faustin-Lac-Carre
Quebec, J0T 1J3
CANADA
Fax: (819) 688-6112

Thomas F. Brodesser, Jr.
462 Seashore Road
Cape May, NJ 08204
Fax: 886-0289

With a copy to:

Jack Plackter, Esq.
Fox Rothschild LLP
1301 Atlantic Avenue, Suite 400
Atlantic City, NJ 08401
Fax: 609-348-6834

Frederick W. Schmidt, Jr., Esq.
106 North Main Street
P.O. Box 120, Unit D
Cape May Court House, NJ 08210-0120
Fax: 609-465-4061

If to NJDEP:

Scott Brubaker, Assistant Commissioner for
Land Use Management
Amy Cradic, Assistant Commissioner for
Natural & Historic Resources
State of New Jersey
Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton, NJ 08625

With a copy to:

Rachel Horowitz, Assistant Section Chief
Lewin J. Weyl, Deputy Attorney General
Environmental Permitting Section, Division
of Law, Department of Law & Public Safety
State of New Jersey,
Richard J. Hughes Justice Complex
PO Box 093
Trenton, NJ 08625
Fax: 609-984-9315

If to ALS:

Timothy Dillingham, Executive Director
American Littoral Society
18 Hartshorne Drive, 2nd Floor
Sandy Hook, NJ 07732

With a copy to:

Andrew J. Provence, Esq.
Ansell Zaro Grimm & Aaron
60 Park Place, Suite 1114
Newark, NJ 07102

Any party may change the address to which communications or copies are to be sent by giving notice of such change in conformity with the provisions of this Section 12 for the giving of notice.

13. The parties agree to work together cooperatively to implement this Agreement.

14. The rights and obligations of the parties set forth in this Agreement shall survive the execution of this Agreement by the parties.

15. The parties agree to execute such further documents and agreements as may be necessary or appropriate to effectuate the purposes of this Agreement.

16. The section headings in this Agreement are for convenience only and shall not affect its interpretation. This Agreement may not be modified or amended orally, but only by written agreement executed by each of the parties hereto.


17. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile copy. The parties agree to exchange original executed copies of this Agreement promptly following the execution and exchange of facsimile copies.

18. This Agreement is to be construed in accordance with the laws of the State of New Jersey.

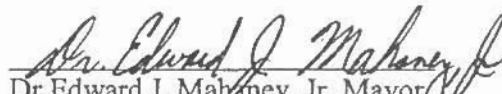
IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the day and year indicated above.

CITY OF CAPE MAY

ATTEST:

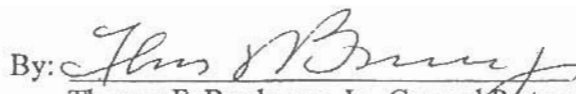

Diane L. Weldon, City Clerk

Dated: July 1, 2009


Dr. Edward J. Mahoney, Jr. Mayor

EAST CAPE MAY ASSOCIATES, a Florida
Limited Partnership

By: _____
Phillip B. Robinson, General Partner

By: 
Thomas F. Brodesser, Jr., General Partner

Dated: July 1, 2009

(signatures continued on following page)

14. The rights and obligations of the parties set forth in this Agreement shall survive the execution of this Agreement by the parties.

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IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the day and year indicated above.

CITY OF CAPE MAY


ATTEST:

Diane L. Weldon, City Clerk

Dr. Edward J. Mahaney, Jr. Mayor

Dated: _____

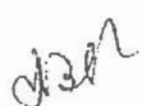
EAST CAPE MAY ASSOCIATES, a Florida
Limited Partnership

By: 
Phillip B. Robinson, General Partner

By: _____
Thomas F. Brodesser, Jr., General Partner

Dated: _____

(signatures continued on following page)



(signatures continued from previous page)

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, an agency of
the State of New Jersey

ATTEST:

Rolinn Madden

BY:

Amy Cradic

Name: Amy Cradic

Title: Assistant Commissioner for Natural
& Historic Resources

BY:

Scott Brubaker
Name: Scott Brubaker

Title: Assistant Commissioner for Land
Use Management

Dated: _____

(signatures continued from previous page)

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, an agency of
the State of New Jersey

ATTEST:

Helen A. Owens

Helen A. Owens

Notary Public

State of New Jersey

My Commission Expires Jan. 24, 2014

Dated: June 24, 2009

BY: _____

Name: Amy Cradic

Title: Assistant Commissioner for Natural
& Historic Resources

BY: Scott Brubaker 6/24/09

Name: Scott Brubaker

Title: Assistant Commissioner for Land
Use Management

EXHIBIT "A"

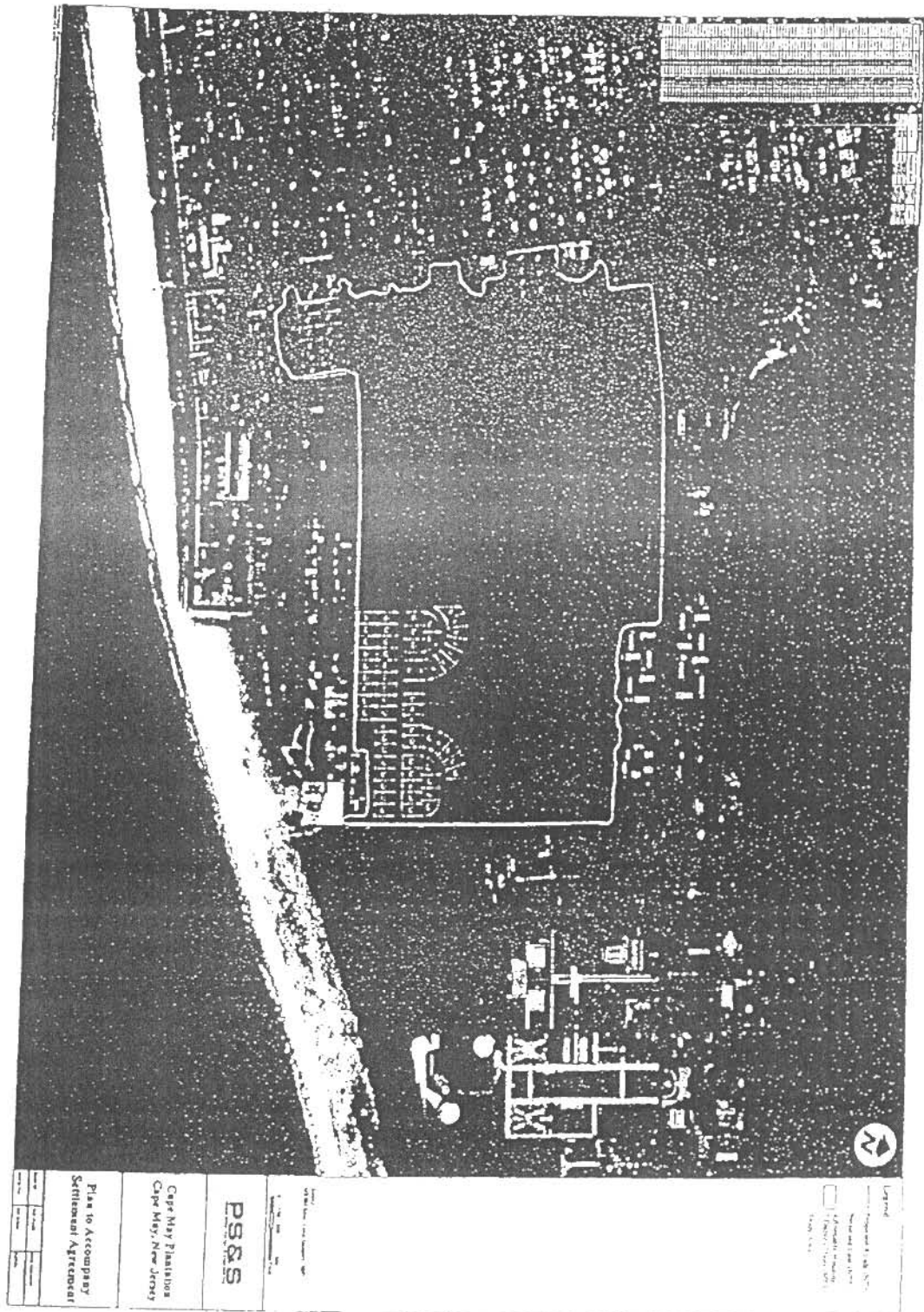


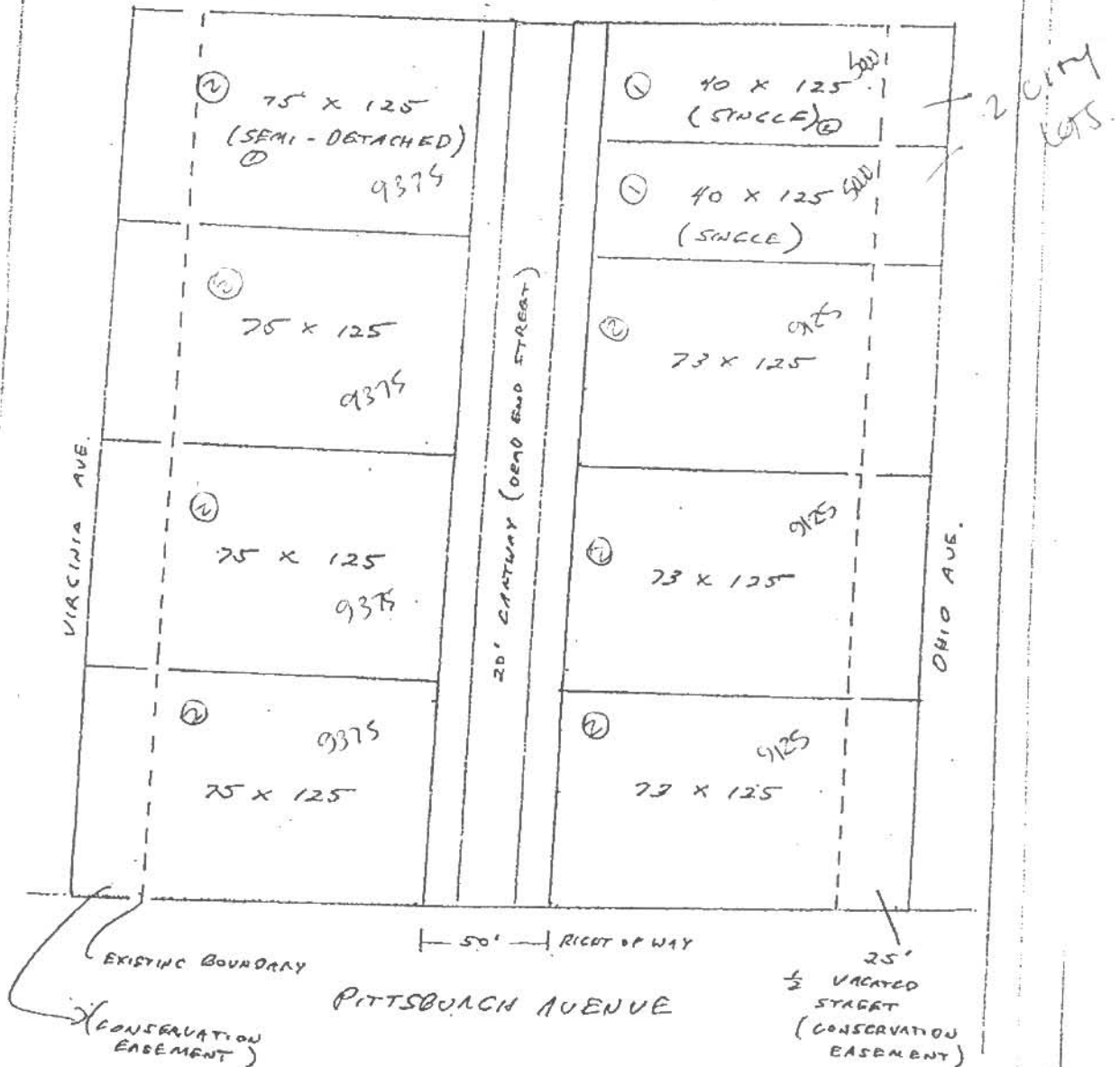
EXHIBIT "B"

SKETCH B

OPTION
2

① REQUIRES VARIANCE
(80 X 125 REQUIRED)

② REQUIRES VARIANCE
(50 X 125 REQUIRED)



ATTACHMENT 2

MEDIATION REPORT
City of Cape May/Cape May County
By William P. Malloy
COAH Mediator
September 25, 2009

The City of Cape May (“Cape May”) petitioned the Council on Affordable Housing (“COAH” or “the Council”) for substantive certification of its third round housing element and fair share plan.

There was one objector to the plan: The Fair Share Housing Center (“FSHC”), which filed an objection dated April 6, 2009.

On June 2, 2009, COAH issued a pre-mediation report requesting additional information (“RRAI”), which indicated that Cape May should supply the requested information within sixty days. Subsequently, Cape May requested an extension of an additional thirty days, which made its response to the RRAI due on September 2, 2009.

While Cape May was preparing its response to the RRAI, mediation of FSHC’s objections began on July 27, 2009, in a session attended by representatives of Cape May and FSHC. Attending for Cape May were Anthony Monzo, Esq., Craig Hurless, P.P., Dr. Edward J. Mahaney, Jr., Mayor of the City of Cape May and Bruce A. MacLeod, City Manager. Attending for FSHC were Kevin D. Walsh, Esq. and Adam M. Gordon, Esq. At the close of this mediation session, the parties indicated that they wanted to continue discussions pending Cape May’s submission of its response to COAH’s RRAI. Initially, a second mediation session was proposed for the end of September. However, a telephone mediation session involving the same parties was held on August 26, 2009. This session resulted in a proposed settlement of the objections. After further discussions between the parties, a settlement was reached. Cape May’s September 2, 2009 response to COAH’s RRAI incorporates that settlement, which FSHC accepted and endorsed by letter dated September 5, 2009.

Background

Cape May has a prior round realistic development potential (“RDP”) of zero units, plus an unmet need of 58 units for its second round. For its third round, Cape May has a rehabilitation share of eight units, a net proposed growth-share obligation of six units and an actual growth share obligation through September 30, 2008, of 22 units of affordable housing. Cape May proposed to address its growth share obligation with a city-wide inclusionary zoning ordinance which would result in seven units of affordable housing; a ten-unit Market to Affordable Program and a ten-unit Accessory Apartment Program. According to the pre-mediation report, Cape May did not propose a rehabilitation program to address its eight-unit rehabilitation share, although its draft spending plan indicated funding for a rehabilitation program. With regard to prior round unmet need credits, the report stated that Cape May’s rehabilitation of 84 units of rental housing was used to address unmet need in the prior round, but that no new mechanisms were proposed for the third round.

In its June 2nd pre-mediation report, COAH stated that Cape May needed to provide an analysis of potential opportunities to address its prior round unmet need. COAH suggested several strategies to capture unmet need, such as a market to affordable program, a municipally sponsored project and zoning for apartments above commercial establishments in the retail district. In the pre-mediation report COAH also stated that Cape May should provide a draft inclusionary zoning ordinance consistent with COAH's regulations and a strategy to address two very low income units. COAH stated that Cape May needed to establish a rehabilitation program consistent with its rules and provide documentation of funding for the program, a rehabilitation manual and a designated administrative agent to administer the program. COAH noted that Cape May intended to provide two very low income units, but did not specify a strategy to do so, which it must do. COAH also requested an adopted resolution of intent to bond, an operating manual for the proposed Accessory Apartment Program and other information.

Objections

The Fair Share Housing Center:

In its April 6, 2009 letter of objection, FSHC enumerated four objections: 1) that units built before 1980 by the Cape May Housing Authority could not be credited to Cape May's unmet need; 2) that Cape May did not propose ways to meet its 58-unit prior round unmet need and that innovative approaches to meeting that need should be considered; 3) that the inclusionary zoning proposed to meet seven units of affordable housing should include specific sites and that the City should provide additional information to show how the proposed overlay zoning creates a realistic opportunity for affordable housing; and 4) that Cape May should provide specific strategies for satisfying the City's very low income obligation and that half of that obligation should be family units.

Mediation

Mediation between Cape May and FSHC took place in Trenton on July 27, 2009. Initially, Cape May noted that it intended to comply with the requirements listed in COAH's pre-mediation report, so that, for example, it intended to specifically address its very low income obligation, two units, in a manner that would resolve FSHC's objection regarding those units. Further, Cape May indicated that its submission to COAH would address FSHC's objections with regard to the proposed overlay zone. Therefore, discussion almost immediately centered on methods by which Cape May could propose to address its 58-unit unmet need from the second round vacant land adjustment. FSHC emphasized the importance to its clients, who are low and moderate income housing-eligible individuals, of addressing this need.

The City noted that it will use 14 affordable housing units, which resulted from a Settlement Agreement between Cape May, the New Jersey Department of Environmental Protection and East Cape May Associates to address a portion of its unmet need. In addition, Cape May suggested the possibility of enhancing its proposed overlay zone as a strategy for further addressing its 58-unit unmet need. It was suggested that a residential overlay zone with an affordable housing set-aside might be proposed for a C-5 district within the City. These proposals would need further study by the City and discussions between the parties. Therefore, it was decided to continue the mediation to a later date.

The mediator initiated a mediation by conference call on August 26 after it became clear that a face-to-face meeting in early September would not be possible. During this call, it was clear that the parties were very close to resolving their differences, and that within a few days, a draft ordinance could be prepared for discussion, reflecting the City's proposals to meet its unmet need. Further, these proposals, if agreed to by FSHC, could then be incorporated into the City's response to COAH's pre-mediation report, which was due on September 2.

Thereafter, in a series of email exchanges, Cape May and FSHC reached agreement with regard to an affordable housing density incentive ordinance. This proposed ordinance, which is attached, is proposed as an amendment to Cape May's § 59.43 Inclusionary Zoning Ordinance. It provides that for purposes of addressing unmet need from Round 2, a higher density incentive for developers of residential housing shall be permitted for any residential development with a total lot area equal to or greater than two acres. In lieu of the City's standard set-aside requirement of 20 % and density bonus of 40 %, as set forth in C. (1), a residential developer with a lot area equal to or greater than two acres shall have the option of selecting a set-aside requirement of 25 % and a density bonus of 50 % for any residential development, regardless of the number of units. Also, the Affordable Housing Density Incentive permits residential units in a C-5 District only under its provisions. An analysis of the potential impact of the proposed ordinance is included.

FSHC's objections to the City of Cape May's fair share plan have all been resolved in Cape May's response to COAH's pre mediation report. In addition to the affordable housing density incentive described above, Cape May indicated in its submission that it would address its very low income housing obligation of two units in its accessory apartment program, including a very low income family unit. This addressed FSHC's objection concerning Cape May's very low housing obligation. Also, Cape May was not seeking credit for pre-1980 Housing Authority units.

By letter to this mediator dated September 5, 2009, attached, FSHC stated that it accepted and endorsed the settlement achieved during this mediation, which was incorporated into the City of Cape May's September 2, 2009 response to COAH's pre-mediation report.

Mediation Outcome

This mediation successfully resolved FSHC's objections to Cape May's Housing Element and Fair Share Plan. COAH staff has evaluated the City of Cape May's response to its pre-mediation RRAI and as noted in the Compliance Report with the attached settlement agreement, COAH staff has made a recommendation that Cape May City should be granted substantive certification.